STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-910

December 30, 1999

MAINE PUBLIC UTILITIES COMMISSION
Investigation into Rates of Maine Telephone Company Pursuant to 35-A M.R.S.A. § 7101-B

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we approve a Stipulation which resolves all of the issues in the above-captioned matter. The Stipulation provides that on May 30, 2001, Maine Telephone Company (Maine) will lower its intrastate access rates to the 1999 NECA tariff rates and that neither the Commission nor Maine will initiate a general rate proceeding until November 1, 2001, absent specific extenuating circumstances.

II. BACKGROUND

On May 27, 1997, the Maine Legislature enacted 35-A M.R.S.A. § 7101-B, which required the Commission to establish intrastate access rates for local exchange carriers based on their interstate access rates as established by the Federal Communications Commission (FCC) by May 30, 1999, and every two years thereafter. On December 19, 1997, we adopted Section 8(J) of Chapter 280 of our Rules, which required Maine (and all other independent telephone companies (ITCs)) to reduce its intrastate access rates by 40% of the difference between its existing rates and the level of the interstate access rates by May 30, 1998. On May 27, 1998, we approved Maine's initial rate reduction.

After these initial rate reductions were filed, the Commission Staff and the Telephone Association of Maine (TAM) began informal discussions to attempt to resolve issues regarding the access rate reductions planned for May 30, 1999. On November 24, 1998, we opened formal investigations into the rates of each ITC, including Maine. The Office of the Public Advocate (OPA), Bell Atlantic, TAM, and David Rathbone subsequently petitioned to intervene in this case and all four petitions were granted.

On January 28, 1999, we issued our Interim Order in this case as well as all of the other ITC investigations. The Interim Order required Maine to reduce its rates to the NECA Pool Disbursement levels by May 30, 1999. It also stated that it was our goal to reduce access rates to NECA Tariff levels by May 31, 2001.

On January 12, 1999, the Staff conducted a Technical Conference in this case. On January 19, 1999, Maine filed its revised rate schedule containing its intrastate access rates to complete the reduction in access rates in accordance with Section 8(J) of Chapter 280 of the Commission's Rules, to go into effect on June 1, 1999. In response to a Staff request, Maine filed backup data to support Maine's proposed filing on May 3, 1999. On June 1, 1999, we allowed Maine's revised Access Rate Tariff to go into effect.

On August 10, 1999, Maine provided the Staff and the Public Advocate with an analysis of the impact of access rate reductions. On August 11, 1999, Maine met with the Staff and the Public Advocate to discuss the information regarding the access rate reductions and to discuss the elements of a plan for transitioning to access rates closer to the NECA Tariff level by May 2001. On October 27, 1999, Maine provided the Staff and the Public Advocated with an updated earnings analysis and on November 3, 1999, another meeting was held with all the parties. These discussions produced the resolution contained in the Stipulation.

On December 2, 1999, Maine Telephone Company filed the attached Stipulation. On December 3, 1999, and December 16, 1999, respectively, TAM and Bell Atlantic filed letters stating that while they were not signing the Stipulation, they did not object to it. On December 17, 1999, the OPA filed a letter saying that he joined in the Stipulation.

III. DECISION

A. Standard

In reviewing a stipulation submitted by the parties to a proceeding, we must consider:

1. whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;

2. whether the process that led to the stipulation was fair to all parties; and

3. whether the stipulated result is reasonable and is not contrary to legislative mandate.

See Consumers Maine Water Co., Proposed General Rate Increase of Bucksport and Hartland Divisions, Docket No. 96-739 (Me. P.U.C. July 3, 1997). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. Id.

B. Discussion

First, we find that the fact that the OPA signed the Stipulation and that Bell Atlantic and TAM did not object to it provides sufficient evidence that there is no appearance or reality of disenfranchisement. The OPA represents the using and consuming public before the Commission and thus, by signing the Stipulation, indicates the OPA's belief that the Stipulation benefits ratepayers. Bell Atlantic will likely be the biggest payer of Maine's access rates and thus, by not objecting to the Stipulation, indicates that the Stipulation adequately addresses its, as well as other access payers', concerns.

Second, we find, based upon our knowledge of our staff's participation in the process that led to the stipulation, that it was fair to all parties. All meetings were noticed to all parties and all parties were given an opportunity to meaningfully participate in the discussions that led to the Stipulation. We find this process inherently fair.

Third, we find that the stipulated result is reasonable and complies with the legislative mandate found in 35-A M.R.S.A. § 7101-B. The most pertinent provisions of the Stipulation are as follows:

> <u>Access Rate Reduction</u>. On May 30, 2001, Maine will reduce its intrastate access rates to the NECA Tariff No. 5 interstate switched access rates effective for the Maine on August 1, 1999. The new rates will stay in effect until at least May 29, 2003.
>
> <u>Rate Case Moratorium</u>. Until November 1, 2001, neither Maine nor the Commission will initiate a rate proceeding.
>
> <u>Exceptions to Rate Case Moratorium</u>. The Rate Case Moratorium may be terminated or modified if Maine is required to reduce its intrastate access rates to a level 10% below the agreed upon levels because of an order, statute, or rule or if certain exogenous events result in a net 10% or more increase or decrease in the costs, revenues, or net operating income of Maine.
>
> <u>Notice of Initiation of Rate Proceeding</u>. If either the Commission or Maine believes that the rate case moratorium should be terminated, it must give notice of its intention to file a rate case and allow an opportunity to object to the notice.
>
> <u>Information on Separations Changes</u>. If the FCC issues an order which "freezes", changes the separations factors or categories, or declares internet or other ESP minutes of use to be jurisdictionally interstate in nature, then, within 60 days of the issuance of the order, Maine will provide the Commission and the Public Advocate with an earnings analysis using the most recently available test year, which reflects the effects of the FCC's order.

We find that, taken together, these provisions are reasonable, meet section 7101-B's legislative mandates, and promote the public interest by protecting ratepayers from a rate increase related to the access rate reductions until well after the

NECA 5 rates are put in place. Given the dynamic nature of the telecommunications industry and anticipated changes in separations, it is possible that by the time Maine's rate case moratorium ends that no rate increase may be needed due to the effects of the access rate reductions.

Section 3(e) of the Stipulation provides procedures to be followed in the event of the initiation of a rate proceeding by either Maine or the Commission. The procedures require notification of the intention to file a rate case and provide twenty-one days for objections to that notice. Because the time for objecting is different from other objection periods allowed by Commission rules, we will require Maine, as well as ourselves, to clearly state the response period required by the Stipulation in the notification filing.

Accordingly, we order:

1. That the Stipulation attached as Attachment A and filed on December 6, 1999, is approved as modified above;

2. That Maine file compliance tariffs by February 1, 2001.

Dated at Augusta, Maine, this 30th day of December, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-910
December 2, 1999

PUBLIC UTILITIES COMMISSION,
Re: Investigation into Rates of
Maine Telephone Company
Pursuant to 35-A M.R.S.A. §7101-B

STIPULATION

Maine Telephone Company ("Telephone Company"), the Office of the Public Advocate, the Telephone Association of Maine and New England Telephone and Telegraph Company, d/b/a Bell Atlantic (collectively "the Parties"), to the extent each has executed this Stipulation, hereby agree and stipulate as follows:

I. PURPOSE

The purpose of this Stipulation is to settle all issues in this proceeding, to avoid a hearing on those issues raised in this case and to expedite the Commission's consideration and resolution of the proceeding. The provisions agreed to herein have been reached as a result of information gathered through review of information provided by the Telephone Company in response to written and oral information requests and discussions among the parties and the Commission's Advisory Staff in this case.

II. BACKGROUND

On May 27, 1997, the Maine Legislature enacted 35-A M.R.S.A. § 7101-B, which required the Commission to establish intrastate access rates for local exchange carriers based on their interstate access rates by May 30, 1999, and every two years thereafter. The Commission subsequently adopted Section 8(J) of Chapter 280 of its Rules, which set forth the method by which Section 7101-B would be implemented.

As a preliminary step towards achieving this goal, Section 8(J) required all independent telephone companies ("ITCs"), including Maine, to reduce their intrastate access rates by 40% of the difference between their existing rates and the level of the interstate access rates by May 30, 1998. On May 27, 1998, the Commission approved Maine's initial rate reduction. After these initial rate reductions were filed, the Commission Staff and the Telephone Association of Maine ("TAM") began informal discussions to attempt to resolve issues regarding the access rate reductions planned for May 30, 1999. In October, 1998, ITCs provide the Staff with earnings analyses of the impact of the 40% reductions. The information was provided in an informal manner to facilitate discussions and negotiations between the Staff and the ITCs.

On November 24, 1998, the Commission opened formal investigations into the rates of each of the ITCs, including Maine. The purpose of the investigation, as set forth by the Commission, was as follows:

> As required by statute, Maine Telephone Company's intrastate access rates must be reduced to the interstate level or lower no later than May 30, 1999. This investigation will consider the potential financial impact upon the Company from this change, and may examine other factors, such as changes to basic local exchange rates or the need for a state universal service fund, that may be needed to offset all or a part of the revenue effect of access rate reductions. Any adjustment to revenues will be based on an assessment of amounts needed to allow the Company an opportunity to earn a fair rate of return.

Investigation Into Rates of Maine Telephone Company Pursuant to 35-A M.R.S.A. § 7101-B, Docket No. 98-910, Notice of Investigation (November 24, 1998), at 2. The Office of the Public Advocate ("OPA"), Bell Atlantic and TAM subsequently petitioned to intervene in Docket No. 98-910 on December 2, 1998, December 3, 1998, and December 22, 1998, respectively. The Commission granted all three petitions to intervene. On December 22, 1998, a Case Conference was held in all of the cases of all ITCs. Also on December 22, 1998, TAM filed a Motion for a Protective Order in the Access Cases.

On January 28, 1999, the Commission issued its Interim Order in the Access Cases which stated the goal that companies would be required to reduce access rates as necessary to achieve intrastate access rates at NECA Pool Disbursement levels by May 30, 1999, and that companies would be required to further reduce intrastate access rates to NECA Tariff levels over the two years following May 30, 1999. The Interim Order also stated that:

> We expect that the ITCs will continue to participate fully in the discovery conferences conducted by Staff. We are hopeful that after further discussions, the ITCs and the other parties will propose stipulated transition plans for our review.

On January 12, 1999, the Staff conducted a Technical Conference in Docket No. 98-913 to discuss information regarding Maine. On January 19, 1999, Maine filed its revised rate schedule containing its intrastate access rates to complete the reduction in access rates in accordance with Section 8(J) of Chapter 280 of the Commission's Rules, to go into effect on June 1, 1999. In response to a Staff request, Maine filed backup data to support Maine's proposed filing on May 3, 1999. On June 1, 1999, the Commission allowed Maine's revised Access Rate Tariff to go into effect.

On August 10, 1999, Maine provided the Staff and the Public Advocate with an analysis of the impact of access rate reductions and a proposal for resolution of this case. On August 11, 1999, Maine met with the Staff and the Public Advocate to discuss the information regarding the access rate reductions. On October 27, 1999, Maine provided the Staff and Public Advocate with an updated earnings analysis for negotiation purposes in response to a Staff request. On November 3, 1999, Maine again met with the Staff and the Public Advocate to discuss the updated information and possible elements of a plan for transitioning to access rates closer to the NECA Tariff level by May 2001, including a possible resolution of this case.

III. STIPULATION PROVISIONS

The Parties to this Stipulation agree and recommend that the Commission order as follows:

1. Access Rate Reduction. The Parties agree that on May 30, 2001, the Telephone Company shall reduce its average intrastate switched access rate per minute to equal the average per minute rate level for the Telephone Company under the NECA Tariff No. 5 interstate switched access rates effective for the Telephone Company on August 1, 1999. The Telephone Company shall implement this access rate reduction by filing, no later than February 1, 2001, revised rate schedules for intrastate access service, bearing the proposed effective date of May 30, 2001. The rate structure of the access rates to be implemented on May 30, 2001, shall be consistent with the rate structure requirements of Section 8(J) of Chapter 280 of the Commission's Rules, unless the requirements are waived by the Commission under Section 15 of Chapter 280. From the date of the Commission's approval of this Stipulation through the earlier of May 29, 2001 or the effective date of any general change in rates pursuant to a rate proceeding initiated upon the termination of the rate case moratorium in Section 2 pursuant to Section 3, the Telephone Company shall not be required to reduce its intrastate access rates below their currently existing level as of the date of this Stipulation. From May 30, 2001 through the earlier of May 29, 2003 or the effective date of any general change in rates pursuant to a rate proceeding initiated either after the expiration of the rate case moratorium in Section 2, below, or upon termination of the rate case moratorium in Section 2 pursuant to Section 3, the Telephone Company shall not be required to reduce its intrastate access rates below the level specified in the first sentence of this Section. The Telephone Company shall not be prohibited by this Stipulation from voluntarily reducing its intrastate access rates.

2. Rate Case Moratorium. The Parties agree that, from the date of the Commission's approval of this Stipulation until November 1, 2001, neither the Telephone Company nor the Commission shall initiate a rate proceeding for the

purpose of effectuating or investigating an increase or decrease of the Telephone Company's rates for basic exchange service, provided that the Telephone Company shall not be prohibited by this Stipulation from voluntarily reducing its rates, and provided further that this rate case moratorium is subject to the exceptions in Section 3.

3. Exceptions to Rate Case Moratorium. The Rate Case Moratorium in Section 2 may be terminated or modified in the event of the following events as described herein:

a. Additional Access Rate Reduction. If the Telephone Company is required, or if it is known with reasonable certainty that the Telephone Company will be required, by statute, by final judicial decision or order or by final administrative rule or order, which preempts or invalidates this Stipulation, to reduce its intrastate access rates to a level below the levels specified in Section 1, and if any such required reduction in access rates individually or cumulatively with any other access rate reductions required after the date of this Stipulation will produce, or it is known with reasonable certainty that it will produce, a reduction in the level of access rates by 10% or more, the Telephone Company shall be allowed to request the Commission to modify the term of the rate case moratorium in Section 2 and/or to immediately initiate a rate proceeding for the purpose of increasing in its rates.

b. Exogenous Events. If one or more of the following exogenous events, including a required reduction in access rates, as described in Section 3(a), occurs, or it is known with reasonable certainty that it will occur, and it results, or it is known with reasonable certainty that it will result, individually or cumulatively, when netted with any other exogenous events, in a 10% or more increase or decrease in the costs, revenues, or net operating income of the Telephone Company, the Telephone Company or the Commission shall be allowed to initiate a rate proceeding for the purpose of increasing or decreasing rates:

(i) The adoption, amendment or implementation of a rule, requirement, order or ruling by a judicial or administrative body, including the Commission, which is specific to the Telephone Company or to public utilities or the telecommunications industry ("regulatory mandate"), including but not limited to jurisdictional separations changes, provided that any rate changes related to implementation of the currently existing BSCA Rule will be in accordance with the provisions of the Rule and the Commission's interpretation and administration of the Rule;

(ii) A statutory change to Title 47 of the United States Code Annotated, Title 35-A of the Maine Revised Statutes Annotated or to federal or state tax laws;

(iii) The adoption of an accounting order, standard or formal letter of interpretation by the Commission or the FCC;

(iv) The occurrence of an extraordinary event totally outside the control of the Telephone Company, which has a very substantial and plainly disproportionate effect on the Telephone Company's revenues, costs or net operating income.

c. Generic Rate Adjustments. If the Commission provides by rule or order for an adjustment of the rates of telephone companies on a generic basis, the Telephone Company may adjust its rates in the same manner as other telephone companies.

d. Timing of Regulatory Mandates. It is the intent of this Stipulation that, to the extent possible, the timing or implementation of any access rate reduction or other regulatory mandate within the control of the Commission, which has an adverse impact on the Telephone Company, shall take place in a manner that does not prejudice the Telephone Company's ability to seek and obtain timely relief.

e. Notice of Initiation of Rate Proceeding. The following procedures shall apply in the event of the initiation of a rate proceeding by the Telephone Company or the Commission pursuant to Section 3(a) or (b):

(i) In the event of a rate proceeding initiated by the Telephone Company, the Telephone Company shall provide written notice to the Commission and the parties to this proceeding of the basis for initiating the rate proceeding, including a description of the relevant events under Section 3(a) or the relevant exogenous events under Section 3(b) and their impacts. Any party to this proceeding objecting to the initiation of the rate proceeding shall have twenty-one days from the date of receipt of the notice to file an objection to the initiation of a rate proceeding. If no party to this proceeding files an objection within the twenty-one days and if the Commission does not give notice that it is commencing a review of the basis for initiating the rate proceeding within the twenty-one days, the Telephone Company may immediately initiate the rate proceeding. If an objection is filed or if the Commission commences such a review, and if the Commission does not issue a decision which finds that a rate proceeding may not be initiated under Section 3(a) or Section 3(b), within 60 days after receipt of the Telephone Company’s written notice, the Telephone Company may immediately initiate the rate proceeding, upon the earlier of the Commission's issuance of an order finding that a rate proceeding may be initiated or 60 days after receipt of the Telephone Company’s written notice.

(ii) In the event of a rate proceeding initiated by the Commission, the Commission shall provide written notice to the parties to this proceeding of the basis for initiating the rate proceeding, including a description of the relevant exogenous events under Section 3(b) and their impacts. Any party to this proceeding objecting to the initiation of the rate proceeding shall have twenty-one days from the date of receipt of the notice to file an objection to the initiation of a rate proceeding. If no party to this proceeding files an objection within twenty-one days and if the Commission does not give notice that it is commencing a reconsideration of the basis for initiating the rate proceeding within the twenty-one days, the Commission may immediately initiate the rate proceeding. If an objection is filed or if the Commission commences such a reconsideration and if the Commission does not issue a decision which finds that a rate proceeding may not be initiated under Section 3(a) or Section 3(b) within 60 days after the receipt of the Commission's written notice, the Commission may immediately initiate the rate proceeding, upon the earlier of the Commission's issuance of an order finding that a rate proceeding may be initiated or 60 days after receipt of the Commission's written notice.

f. Information on Separations Changes. If the FCC issues an order which "freezes", changes the separations factors or categories, or declares internet or other ESP minutes of use to be jurisdictionally interstate in nature, then, within 60 days of the issuance of said order, the Telephone Company shall provide the Commission and the Public Advocate with an earnings analysis using the most recently available test year, which reflects the effects of the FCC's order. The Telephone Company may request and the Commission may grant an extension of time or waiver of this requirement. Prior to submitting the earnings analysis the Telephone Company shall consult with the Commission Staff and the Public Advocate with regard to determining the most recently available test year period to be used in the earnings analysis. This section shall not apply if the rate case moratorium has been terminated.

4. Staff Presentation of Stipulation. The Parties to the Stipulation hereby waive any rights that they have under 5 M.R.S.A. § 9055 and related Commission Rules to the extent necessary to permit the Advisor Staff to discuss this Stipulation and the resolution of this case with the Commission at public deliberations, without the participation of any party, except in the case where a Party to this proceeding is opposing this Stipulation.

5. Record. The record on which the Commission may base its determination whether to accept and approve this Stipulation shall consist of this Stipulation, all documents provided in responses to data requests and information requests of the Advisor Staff and any other material furnished by the Advisor Staff to the Commission, either orally or in writing, at the time of the Commission's consideration of this proceeding.

6. Non-Precedential Effect. Except where it may be expressly noted herein, the Stipulation shall not be considered legal precedent, nor shall it preclude a party from raising any issues in any future proceeding or investigation on similar matters subsequent to this proceeding.

7. Stipulation as Integral Document. This Stipulation represents the full agreement between all parties to the Stipulation and rejection of any part of this Stipulation constitutes a rejection of the whole.

MAINE TELEPHONE COMPANY

By: ________________________ ________
Its: Date

OFFICE OF THE PUBLIC ADVOCATE

By: ________________________ ________
Its: Date

TELEPHONE ASSOCIATION
OF MAINE

By: ______________________ ________
Its: Date

NEW ENGLAND TELEPHONE AND
TELEGRAPH COMPANY,
D/B/A BELL ATLANTIC

By: ______________________ ________
Its: Date

By: ______________________ ________
David Rathbone Date

\\Aword1\jgdonahu\UTILITIE\Maine Stipulation 120299.doc